APPENDIX

E. ROBERT SEAVER, CLERK

Supreme Court of the United States

~~OCTOBER~~ TERM, ~~1970~~ 1971

No. ~~5795~~ 70-5015

JON RICHARD ARGERSINGER,

Petitioner,

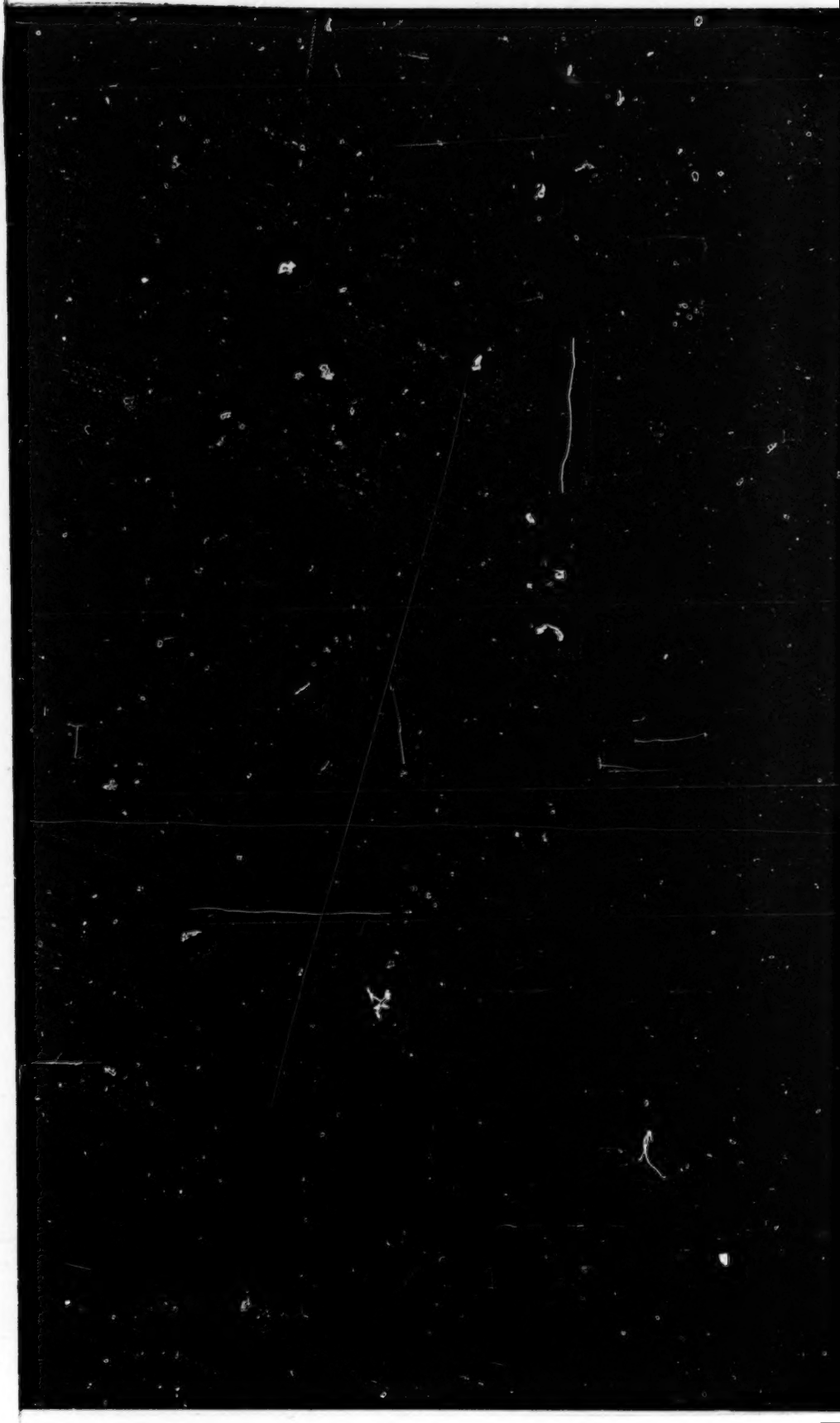
—v.—

RAYMOND HAMLIN, SHERIFF, LEON COUNTY, FLORIDA

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR CERTIORARI FILED SEPTEMBER 1, 1970
CERTIORARI GRANTED FEBRUARY 22, 1971



Supreme Court of the United States

OCTOBER TERM, 1970

No. 5798

JON RICHARD ARGERSINGER,

Petitioner,

—v.—

RAYMOND HAMLIN, SHERIFF, LEON COUNTY, FLORIDA

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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IN THE SUPREME COURT OF FLORIDA

Case No:

(File Endorsement Omitted)

(Oral Argument, Monday, February 2, 1970, Five Man Court, Fifteen Minutes to the Side)

STATE OF FLORIDA, ex rel. JON RICHARD ARGERSINGER, PETITIONER

vs.

RAYMOND HAMLIN, Sheriff, Leon County, RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS—filed January 20, 1970

To the Honorable Justices of the Above Styled Court,

YOUR Petitioner, JON RICHARD ARGESINGER, by and through his undersigned attorney, bring application for a Writ of HABEAS CORPUS, pursuant to 79.01 F.S. and the Declaration of Rights, section 7, of the Florida Constitution, and on oath says:

1. He is presently incarcerated in the County Jail of Leon County, Florida, in the custody of the Respondent RAYMOND HAMLIN and is therefore restrained of his liberty.

2. Petitioner, is 19 years of age, and was at all times material to this writ, indigent and otherwise without funds to secure the services of counsel.

3. Petitioner, on January 12, 1970, was charged in the County Judge's Court of Leon, in and for Leon County, with carrying a concealed weapon, a misdemeanor under 790.01 (1) F.S., punishable by imprisonment in the county jail up to (6) six months in jail and $1,000.00 fine. On January 13, 1970, James C. Gwynn, judge of said Court, adjudged Petitioner guilty of said offense, and sentenced

Petitioner to serve 90 days in the County Jail of Leon County.

4. At the time of said adjudication and prior thereto, Petitioner, was indigent, was unrepresented by counsel, nor did he waive assistance of counsel.

5. Petitioner is now serving the above mentioned sentence, but is and was deprived of equal protection of law and his rights as secured by the Fourteenth and Sixth Amendments of the United States Constitution, and the Declaration of Rights, section 1, as of the Florida Constitution, and has no remedy save this honorable Court's intervention.

6. Petitioner verily believes now that he has good and sufficient defenses to the charges for which he stands convicted, but having been deprived of his right to counsel, was unable as an indigent layman, to properly raise and present these defenses to the trial court.

7. Petitioner is now represented by counsel, secured by friends.

WHEREFORE, Petitioner prays this Court will issue its writ commanding the Respondent Hamlin to produce the body of Petitioner before this honorable Court on a day certain, to show sufficient cause for his detention and, failing this, Petitioner Be Discharged; alternatively Petitioner prays this Court will cause the writ to be issue and set bond payable to the Governor, securing the Petitioner's appearance in Court, pending this Court's ruling on this case.

/s/ Jon Argersinger
JON RICHARD ARGERSINGER

[*Duly sworn to by Jon Richard Argersinger, jurat omitted in printing (all in italics)*]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1970

Tuesday, January 20, 1970

Case No. 39,309

(File Endorsement Omitted)

STATE OF FLORIDA, ex rel. JON RICHARD ARGERSINGER, PETITIONER

vs.

RAYMOND HAMLIN, Sheriff, Leon County, RESPONDENT

WRIT OF HABEAS CORPUS—January 20, 1970

In the Name and by the Authority of the State of Florida to Raymond Hamlin, Sheriff, Leon County, Greeting:

Jon Richard Argersinger has filed in this Court his Petition for Writ of Habeas Corpus charging that he is illegally detained and imprisoned by you. The Writ is granted and you are hereby commanded to make return to same instanter, showing the lawful cause and authority for the detention and imprisonment of the petitioner, and thereafter to comply with the order of this Court in the matter.

It is further ordered by the Court that this case is set down for oral argument at 9:30 o'clock a.m. Monday, February 2, 1970, on the merits, fifteen (15) minutes to the side. Pending disposition of the cause in this Court, the petitioner is committed to bail in the amount of $500, to be approved by this Court, and conditioned upon his appearance to answer further process of this Court.

DONE AND ORDERED at Tallahassee, Florida, this 20th day of January, A.D. 1970.

/s/ (Illegible)
Acting Chief Justice of the
Supreme Court of Florida

I hereby accept service of the above on behalf of the State of Florida.

/s/ R. L. Marky
Asst. Atty. General

IN THE SUPREME COURT OF FLORIDA

39,309

(File Endorsement Omitted)

STATE OF FLORIDA, ex rel. JON RICHARD ARGERSINGER, PETITIONER

vs.

RAYMOND HAMLIN, Sheriff, Leon County, RESPONDENT

RESPONSE TO WRIT OF HABEAS CORPUS—filed January 29, 1970

COMES NOW the Respondent, Raymond Hamlin, Sheriff, Leon County, Florida, by and through his undersigned attorney, pursuant to this Court's order of January 20, 1970, and files this his return thereto and says as follows:

I

Respondent admits that at the time of the issuance of the aforesaid Order Petitioner was incarcerated in the Leon County Jail under Respondent's custody and control, but that said Petitioner has since been released on bail pending a disposition of the cause herein.

II

The basis for said confinement is a Commitment Order issued by the County Judge's Court, in and for Leon County, Florida, dated January 19, 1970, a true and correct copy of which is attached hereto and made a part hereof, marked Respondent's Exhibit "A".

III

Said commitment was issued pursuant to a judgment and sentence entered against Petitioner on his guilty plea entered January 13, 1970. Petitioner was sentenced to pay a fine of $500, and in default of the payment of

such fine and costs, to be imprisoned in the county jail for a period of three months.

IV

Petitioner plead guilty to violating § 790.01(1), Fla. Stat., as amended 1969, Laws of Florida, Chapter 69-306, carrying a concealed weapon, to-wit: brass knuckles. Under said statute Petitioner was subject to ". . . imprisonment for not less than three (3) months nor exceeding six (6) months, or by fine of not less than five hundred (500) dollars nor exceeding one thousand (1,000) dollars, or by both such fine and imprisonment. . ."

V

Respondent is without knowledge as to whether Petitioner was indigent or otherwise without funds or other assets with which to secur the services of retained counsel to represent him in the County Judge's Court, and therefore denies the same.

VI

Respondent is without knowledge as to whether Petitioner verily believes he has a good and sufficient legal defense to the charge lodged against him but denies he was unable to properly raise and present these defenses to the trial court. Respondent alleges that Petitioner, through counsel, retained by his friends, said matters could have been presented by way of a Motion for New Trial under Rule 1.600, Fla. Rules of Cr. Proc.

VII

Respondent alleges Petitioner is neither ignorant or uneducated and thus unable to understand the nature of the proceedings against him. Respondent alleges to the contrary; that is, that Respondent is above average intelligence and is an articulate individual capable of understanding the nature, quality and consequences of his acts.

VIII

Respondent denies Petitioner was deprived of the equal protection of the law and his rights secured by the Fourteenth and Sixth Amendments of the United States Constitution. Respondent further denies Petitioner was denied any right guaranteed under the laws of the State of Florida and/or the Constitution thereof.

IX

Respondent affirmatively alleges that the Petitioner has not exhausted his legal remedies that presently exist, to-wit: direct appeal from the judgment and sentence to the appropriate appellate court as provided by Article V, Sec. 6(3) of the Constitution of the State of Florida, and has improperly invoked the jurisdiction of this Court.

WHEREFORE, Respondent having made response to this Court's order of January 20, 1970, respectfully moves that the Writ be discharged and Petitioner remanded to the custody of your Respondent.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

/s/ Raymond L. Marky
RAYMOND L. MARKY
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for the Respondent

[PROOF OF SERVICE (omitted in printing)]

EXHIBIT A

COMMITMENT TO SERVE SENTENCE

IN COUNTY JUDGE'S COURT

LEON COUNTY, STATE OF FLORIDA

Case No. 145-239A

STATE OF FLORIDA

vs.

JON ARGERSINGER

In the Name of the State of Florida, to the Sheriff or any Constable of said County:

Whereas, in this Court the DEFENDANT, ... , was, upon the 13 day of January, A.D. 1970, tried and convicted of the offense of carrying concealed weapon and,

Whereas, on the 13 day of January, A.D. 1970, he, the said DEFENDANT ....., was sentenced by this Court as follows, to-wit: to pay and forfeit to the State of Florida, for the use of Leon County, a fine in the sum of $500.00, to include costs of Court, and in default of the payment of such fine and costs to be imprisoned in the County Jail of Leon County, Florida, at hard labor, for a period of three (3) months, to begin and run from the date of this sentence.

You are therefore commanded forthwith to convey the said DEFENDANT ..... to the County Jail of said County and deliver him to the keeper thereof, who is hereby required to receive the said DEFENDANT ..... into said Jail and safely keep him until the judgment of this Court is satisfied or he be thence discharged by due course of law.

Given under my hand and seal this 19 day of January, A.D. 1970.

/s/ James E. Gwynn (Seal)
County Judge.

[Not final until time expires to file rehearing petition and, if filed, determined.]

IN THE SUPREME COURT OF FLORIDA

January Term A.D. 1970

Case No. 39,309

STATE OF FLORIDA, ex rel. JON RICHARD ARGERSINGER, PETITIONER

vs.

RAYMOND HAMLIN, Sheriff, Leon County, RESPONDENT

Opinion filed June 3, 1970

Case of original jurisdiction—Habeas Corpus
J. Michael Shea, for Petitioner

Earl Faircloth, Attorney General and Raymond L. Marky, Assistant Attorney General, for Respondent

Phillip A. Hubbart, Ronald K. Cacciatore and Roy T. Rhodes of Horne, Rhodes, Brown & Stephens for The Florida Bar; Ralph A. Marsicano, for Florida League of Municipalities; and Bruce S. Rogow, Amicus Curiae

OPINION

ROBERTS, J.

We have taken original jurisdiction of this habeas corpus proceeding to reexamine our previous decisions in *Fish* v. *State*, Fla. 1964, 159 So.2d 866, *Watkins* v. *Morris*, Fla. 1965, 179 So.2d 348, and *State ex rel. Taylor* v. *Warden*, Fla. 1967, 193 So.2d 606, holding that an indigent defendant is not entitled to court-appointed counsel when accused only of a misdemeanor. It is noteworthy that, since our decision in *Fish*, the United States Supreme Court has denied certiorari in three cases involving a denial of counsel in misdemeanor cases: *Winters* v. *Beck*, 385 U.S. 907, 87 S.Ct. 207, 17 L.Ed.2d 137 (1966); *DeJoseph* v. *Connecticut*, 385 U.S. 982, 87 S.Ct. 526, 17 L.Ed.2d 443 (1966); and *Heller* v. *Connecticut*, 389 U.S.

902, 88 S.Ct. 213, 19 L.Ed.2d 679 (1967). And we are by no means persuaded that the position we took in *Fish*, and the reasoning upon which it was based, are no longer valid.

But our conclusion in this respect does nothing to extricate the trial courts of this state from the horns of the dilemma in which they now find themselves. On the one hand is the decision of this court in *Fish* affirming a lower court which had denied a court-appointed counsel to indigent misdemeanants; and on the other hand are the Fifth Circuit federal courts—both trial and appellate —that with the aid of the Sixth and Fourteenth Amendments and the writ of habeas corpus are coercing our state courts in decisions that are as distinguished for their lack of uniformity as for their lack of sound precedent, *insofar as the applicability of Gideon* v. *Wainwright*, 372 U.S. 335, 83 St. Ct. 792, 9 L.Ed.2d 799 (1962) *to state trials of misdemeanor charges are concerned.*

In this confusing situation we feel that we have no alternative but to adopt the decision of the federal court of this judicial circuit that we feel most nearly approximates any decision in this respect that might be adopted by the Supreme Court of the United States. Assuming *arguendo* that that Court will eventually decide that *Gideon* should be extended to include misdemeanor trials, it is fair to presume that it would apply to the right-to-counsel rule the same principles applicable to a determination of the right to a jury trial, namely, that this right extends only to trials for nonpetty offenses punishable by more than six months imprisonment. See *Frank* v. *United States*, 395 U.S. 147, 89 S.Ct. 1503, 23 L.Ed.2d 162 (1969); *Duncan* v. *Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 538 (1968); *Bloom* v. *Illinois*, 381 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); and *Cleff* v. *Schnackenberg*, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966).

This is the standard adopted in *Brinson* v. *State*, S.D. Fla. 1967, 273 F.Supp. 840, in which the U. S. District Court, speaking through Judge Mehrtens, pointed out that "the 'absolute right' to counsel in all criminal prosecutions must be qualified by practical exigencies and, unless this

is done, the necessities of sound judicial administration would be disregarded and the administration of justice thrown into senseless chaos." Judge Mehrtens noted also that the blanket application of the rule to all misdemeanor cases "could lead to the appointment of counsel for misdemeanors not normally considered criminal, such as overparking and other petty traffic offenses, jaywalking, dropping trash upon the sidewalk, and like offenses."

To Judge Mehrtens' observations we might add that misdemeanors are usually associated with trivial offenses described as *Malum prohibitum* rather than *malum in se*, as are most felonies. Misdemeanors have none of the sanctions in addition to fine or imprisonment associated with felonies. A conviction of a felony is punished not only by imprisonment but also by the forfeiture of civil rights, such as the right to vote, to serve on a jury, and to hold public office, see *Marsh* v. *Garwood*, Fla. 1953, 65 So.2d 15, 19; and not infrequently such a conviction will prove to be an insurmountable barrier to desirable employment.

Thus, the two classes of offenses are widely separated in type, kind, punishment and effect; and even though the basic and fundamental "due process" right guaranteed by the Fourteenth Amendment must be held to include the Sixth Amendment right-to-counsel in felony cases as was held in *Gideon*, supra, it does not necessarily follow that this Sixth-Fourteenth tandem can reach down into the lowest echelons of petty offenders and hand out to them the free services of an elaborate and expensive public-defender system to defend them against charges of overparking or other petty offenses. In the words of Judge Mehrtens in *Brinson*, supra, "[t]he demands upon the bench and bar would be staggering and well-nigh impossible."

In these circumstances, and pending a definitive decision of the United States Supreme Court on the subject, we adopt the reasoning and the conclusion of the *Brinson* case, supra, and hold that an indigent defendant accused of a misdemeanor is entitled to court-appointed counsel only when the offense carries a possible penalty of more than six months imprisonment; and insofar as *Fish* and

the other cases cited above are in conflict herewith, we hereby recede therefrom.

We are indebted to learned counsel for the briefs and oral arguments presented on behalf of The Florida Bar, The Florida League of Municipalities, the Economic Opportunity Legal Services Program of Dade County, Inc., and, especially, the exhaustive briefs filed on behalf of the State of Florida—all of which have been enlightening and educative and have greatly lessened our labors.

Since it affirmatively appears in the record that the maximum term of imprisonment provided by statute for the offense charged against petitioner was six months, and that he was actually sentenced to three months, it has not been made to appear that petitioner was entitled to counsel. Accordingly, the writ heretofore issued should be and it is hereby

Discharged.

DREW, THORNAL and CARLTON, JJ., concur

BOYD, J., concurring in part and dissenting in part with Opinion

ERVIN, C.J., and ADKINS, J., concur with BOYD, J.

BOYD, J., CONCURRING IN PART, DISSENTING IN PART:

A careful examination of *Gideon* v. *Wainwright*,[1] indicates no intention of the Court to limit the right of counsel at public expense to only those indigents accused of major crimes. On the contrary the case says in part:[2]

> "[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

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[1] 372 U.S. 335 (1962).

[2] Id. at 344.

Opinions of United States Circuit Courts of Appeal[3] extend the right of counsel to persons facing possible imprisonment regardless of the degree of their offenses or length of possible incarceration. At least seven states require counsel for all indigents charged with misdemeanors punishable by imprisonment.[4]

In *Application of Gault*,[5] the United States Supreme Court extended the right of counsel to all juveniles accused of offenses in juvenile court. If a group of indigent teen age children jointly commit a minor offense, it seems difficult to explain why the older children, who are tried as adults, will not be provided counsel at trial while their colleagues, who are a few days younger, receive counsel because they are technically juveniles.[6] Surely this is not truly equal protection of the law. In *State* v. *Steinhauer*, this Court stated:[7]

> "The right to counsel cases, such as Gideon v. Wainwright, * * * all recognized the essentiality of the assistance of counsel as a facility in the fact-finding and truth-determining process. They could be analogous to juvenile court hearings for determination of delinquency with attendant commitment to detention."

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[3] *McDonald* v. *Moore*, 353 F.2d 106 (5th CCA 1956); *Harvey* v. *State*, 340 F.2d 263 (5th CCA 1965); *Goslin* v. *Thomas*, 400 F.2d 594 (5th CCA 1968); *Boyer* v. *City of Orlando*, 402 F.2d 966 (5th CCA 1968); *James* v. *Headley*, 410 F.2d 325 (5th CCA 1969); *Bohr* v. *Purdy*, 412 F.2d 321 (5th CCA 1969); *Evans* v. *Rivers*, 126 F.2d 633 (D.C.C. 1942).

[4] *In re Johnson*, 62 Cal.2d 325, 398 P.2d 420 (1965); *People* v. *Witenski*, 15 N.Y.2d 392, 207 N.E.2d 358 (1965); *People* v. *Garret*, 43 Ill.App.2d 183, 193 N.E.2d 229 (1963); *Mulcahy* v. *Commonwealth*, 227 N.E.2d 326 (Mass.Sup.Jud.Ct. 1967); *State* v. *Borst*, 278 Minn. 388, 154 N.W.2d 888 (1967); N.H. REV.STAT.ANN. §§ 604-A:1:2 (Supp. 1967); TEX. CODE CRIM. PROC. Art. 26.04 (1966); see, Junker, *The Right to Counsel in Misdemeanor Cases*, 43 WASH.L.REV. 685, 719 (1968).

[5] 387 U.S. 1 (1967).

[6] *Application of Gault*, 387 U.S. 1 (1967); *State* v. *Steinhauer*, 216 So.2d 214 (Fla. 1968).

[7] *State* v. *Steinhauer*, 216 So.2d 214, 219 (Fla. 1968).

State Courts owe as much duty as Federal Courts to construe and protect constitutional rights.

The Sixth Amendment to the Constitution of the United States is the fount from which flows the right of counsel including rights of indigents to counsel at taxpayers' expense. The Fourteenth Amendment to the Constitution of the United States grants equal protection of the laws to all citizens. Section 2, Article 1 of the Constitution of the State of Florida provides that "all natural persons are equal before the law." Under these provisions, we must treat all citizens equally before the law. All persons accused come to the bar of justice as equals, all being presumed innocent.

Federal and State Constitutions are adopted for all of the people and must be applied uniformly. When a person is denied the exercise of constitutional rights, they are as meaningless to him as the shadow of a ghost. There is no magic yardstick by which we can determine liberty is more precious to one person than to another. From the inside all jails look alike.

The well reasoned opinion of the majority heads the Court in the right direction. It does not go far enough to meet constitutional standards of equal protection of the law. Any indigent charged with violating any state law or county or municipal ordinance punishable by a jail sentence or imprisonment for any time whatever is entitled to counsel at the expense of the prosecuting entity of government.

I concur with those provisions of the majority opinion extending benefit of counsel to indigents but dissent from the conclusion limiting right of counsel for indigents at government expense. The action of the trial court should be quashed and a new trial should be granted with benefits of counsel as is now provided for any other indigent.

ERVIN, C.J., and ADKINS, J., concur

[Petition for Rehearing covering 3 pages filed June 16, 1970 omitted from this print. It was denied, and nothing more by order July 7, 1970.]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM A.D. 1970

Case No. 39,309

STATE OF FLORIDA, ex rel. JON RICHARD ARGERSINGER, PETITIONER

vs.

RAYMOND HAMLIN, Sheriff, Leon County, RESPONDENT

ORDER DENYING PETITION FOR REHEARING—July 7, 1970

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

[Clerk's Certificate to foregoing transcript omitted in printing.]

SUPREME COURT OF THE UNITED STATES

No. 5798, October Term, 1970

JON RICHARD ARGERSINGER, PETITIONER

v.

RAYMOND HAMLIN, Sheriff, Leon County, Florida

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—February 22, 1971

On petition for writ of Certiorari to the Supreme Court of the State of Florida.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 423498 615

No. 70-5015

Brief of The National Legal Aid and Defender Association, as amicus curiae, filed April 8, 1971. NOT PRINTED.